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Should there be Freedom of Dissociation?

David S. Oderberg*

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Abstract

Contemporary liberal societies are seeing increasing pressures on individuals to act against their consciences. Most of the pressure is directed at freedom of religion but it also affects ethical belief more generally, contrary to the recognition of freedom of religion and conscience as a basic human right. I propose the idea that freedom of *dissociation*, as corollary of freedom of association, could be a practical and ethically acceptable solution to the conscience problem. I examine freedom of association and explain how freedom of dissociation follows from it, showing thereby how dissociation protects freedom of religion and conscience. Extreme cases, such as the problem of the Satanist nurse, can be handled within a dissociationist framework, so it is reasonable to think these extreme cases can also be dealt with. The serious objection that dissociationism entails unjust discrimination is answered, primarily by appeal to the need for 'full and fair access' to goods and services by all groups. I then allay important concerns about what kind of liberal society we should want to live in. Next, I refute the charge that a dissociationist society violates liberalism's 'higher good', arguing that liberalism strictly does not have a higher good. I conclude with some reflections on what a dissociationist society might look like.

Keywords: freedom of association; freedom of conscience; religious freedom; conscientious objection

1. Introduction: the problem of conscience in contemporary liberal society

I begin with some recent news stories to illustrate the theme of this paper:

> 1) Health insurers in California *required* by the state to provide health cover for abortion (not just contraception) *even if* the employer is a *church*.[1]
>
> 2) The College of Physicians and Surgeons of Ontario now requires all Ontario doctors to *refer* requesters of euthanasia if the doctor objects.[2]
>
> 3) Catholic care home in Belgium *fined* for refusing euthanasia.[3]

Two of these cases concern Christians and Christian organisations. All of them concern health care. For an illustration not involving Christians, consider:

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4) In a recent survey of medical students, 36% of Muslims said they would object to performing an intimate examination of a patient of the opposite sex.[4] The General Medical Council's Education Committee, however, said in 2006 that 'it would not be possible for a doctor to practise in that environment while refusing to examine, for example, half of all patients on grounds of gender'.[5]

For an illustration not involving healthcare, there is this:

5) In 2007, the University of Delaware was forced by adverse publicity to drop a 'treatment' programme in residence halls for the ideological manipulation of students. Students were required to meet with advisers to answer questions such as 'when did you discover your sexual identity?' questions about their views on environmentalism, diversity, racism, and whether they were 'privileged' or 'oppressed'.[6] When one student was asked about their sexuality, she replied 'none of your damn business', as one might expect.

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What these and countless other cases have in common is that they involve people being compelled by law, or by regulations of some kind, or by general expectation, to act in a way contrary to their sincerely held religious and/or ethical beliefs. Healthcare is clearly a lightning rod for this kind of problem, but it can be found across society from solemn legal environments to everyday situations. As far as health care is concerned, a recent 'consensus statement' has been proclaimed by fifteen bioethicists and philosophers, in which they insist, among other things, that: (i) medical practitioners should normally allow their professional obligations to override their consciences; (ii) they must, if they refuse to carry out a particular treatment, refer the patient to someone who will, or if this is impossible they must do it themselves; (iii) tribunals should be established to assess the sincerity and reasonableness of a practitioner's conscientious objection; (iv) the burden should be on the practitioner to prove that their objection is sincere and reasonable; (v) practitioners who receive an exemption on grounds of conscience should compensate society by doing some other work of public benefit; (vi) students should be trained in performing 'basic medical procedures' even if they believe them morally wrong; and (vii) practitioners should be 'educated' about their professional obligations and the possibility of 'cognitive bias' in their conscientious objection.[7]

Clearly there are rumblings of concern within health care about the problems caused by people of differing religious and ethical outlooks working in the same environment and all aiming at providing the same overall kind of service. The problem is only magnified outside health care, even in a multitude of relatively quotidian ways, whether it be an objection to

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having to use a 'gender-neutral' bathroom, sunning oneself on the beach next to Moslem women in burkas, compulsory sex education in schools, and so on. The choice of illustration is not relevant to the present discussion, even though individual examples are interesting and worth discussing. Nor, to be frank, are the merits of any particular case relevant to present purposes. My focus is on the increasing conflict between significantly different viewpoints in a liberal, pluralistic, and largely secular society. The conflict might be between different religious outlooks or between a secular and a religious outlook, and involve variations within those overarching perspectives.

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Not at once that by 'liberal' I do not mean something as specific as classical liberalism to the exclusion of social liberalism, or vice versa. Although the social liberalism of contemporary society is what will most readily come to mind throughout the present discussion, I do not see as great a difference between it and classical liberalism as others might. Both kinds of liberalism privilege the secular, pluralistic state and aim at harmony in diversity. Whereas the classical liberal expects the aim to be realised voluntarily, the social liberal is not afraid to enlist government to enforce the harmony. With social liberalism now dominant, and given its emphasis on the role of the state, the threat to freedom of religion and of conscience clearly comes from that direction rather than from classical liberalism.

At the moment, the way Western societies (my sole concern) deal with conflicts between various ethical outlooks, whether religious or secular, is in a piecemeal fashion, on a case-by-case basis. The courts, mainly in the USA, are loaded with litigation either challenging some law requiring a person or group to, as they see it, violate their religious/ethical beliefs, or attempting to overturn a *refusal* by some person or group to act in this way. Whether it's wearing a cross at one's place of work,[8] wearing a Burkini on the beach,[9] or baking a cake for a gay wedding,[10] governments and courts try to handle the situation in a way that does not set an overall precedent for these types of conscientious objection case.

This is not a stable solution. Maybe there is no stable solution, but some solutions might be more stable than others. Moreover, it is not merely a question of stability but of morality. Can any overarching principle be proposed to justify a general approach to these cases? Well, there is the principle of compulsion: conscientious objection should have no recognition, and any person (or group) may be compelled by the law to violate their conscience for a good reason. The authors of the 'consensus statement' on conscientious objection seem to have a slightly milder form of that position as regards health care, the rider being that good reasons are those involving currently legal treatment that is in the best

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interests of the patient. By this reasoning apotemnophilia, a person's persistent desire for the amputation of a healthy limb, if the amputation were to remove that desire and spare the person mental distress, might well be required 'treatment' even if it violated the consciences of most doctors, religious or not. That aside, the principle of compulsion leaves the crucial question untouched: what *counts* as a good reason? A religious person might well sign up to the principle that conscience can be overridden. But they would differ markedly from a secularist about the conditions under which that can be done. Abortion is a classic example; wearing a Burkini on the beach a relatively newer one. So the principle of compulsion would bring us back to square one.

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Moreover, isn't compulsion supposed to be a last resort in a liberal society? Isn't freedom of religion a fundamental right in such a society? At the very least, should it not entail that religious people cannot be compelled to act in violation of their deeply-held religious beliefs, at least the ones that are central to their religious outlook? Religious freedom has had the occasional notable success recently, perhaps the most famous being the landmark US Supreme Court case of *Burwell v Hobby Lobby*, in which a for-profit corporation was exempted from providing employee contraceptive cover as part of its Obamacare-mandated employer health insurance plan. The ground was that the company owners complained the mandate violated their sincerely-held religious beliefs, and the court agreed.[11] In that case, however, the plaintiffs could rely on the strongly-worded *Religious Freedom Restoration Act* 1993,[12] and yet even that legislation is hedged in many American states by 'non-discrimination' clauses or supplementary statues containing, for instance, 'LGBT' anti-discrimination provisions.[13]

It is fair to say, as a matter of fact, that it is religious believers who are very much on the back foot in the current state of things, and increasingly so.[14] I cannot think of a single case where, in one of the modern, liberal, democratic, secular, pluralistic societies a secular person – one who is non-religious or who, even if privately religious, does not take religious principle to be a guide to how they should act publicly or in relations with other people – has found themselves under legal pressure to conform to a religious norm. By the definition of the kind of societies we are talking about, this is going to be rare. On the other hand, you will find a small minority of cases where secular people have objected, in conscience, to the legal pressure of secular norms – the most well known being conscientious objection in wartime, but there is also compulsory sex education in schools, to which even many secular people object. Still, if you look at the history of litigation in this area, it nearly always involves

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religious individuals or organisations objecting to laws that compel them to act against their beliefs.

Whatever the *ultimate*, objective solution to these problems, I question whether, in a society of the kind that is my concern, there can be any solution short of the one I am going to consider. Secular compulsion – a general governmental right to override conscience – is incompatible with a liberal society as liberalism is commonly understood. So is blanket protection for conscience as an inviolable right. A piecemeal approach seems to me both unprincipled and to postpone the problem rather than resolving it. But there might be another way: although it would be consistent with the main characteristics of a liberal society it would not exactly live up to its ideals; but then I'm not sure its ideals – or perhaps its ambitions – were ever acceptable to large portions of the citizenry of most liberal states. Even for more pragmatic liberals the solution might fall short of expectations, but it is a question of weighing alternatives and it may be that, if a solution consistent with liberalism is available and has the least cost, it is the one behind which liberals should rally whether they like it or not.

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2. Freedom of association entails freedom of dissociation

I propose, then, not to start from freedom of religion, or freedom of conscience, but from freedom of association. Freedom of association is another one of the rights always officially recognised in liberal societies. The UN's Universal Declaration on Human Rights puts it as follows:[15] '(1) Everyone has the right to freedom of peaceful assembly and association; (2) No one may be compelled to belong to an association'. The European Convention on Human Rights says:[16] 'Everyone has the right to freedom of peaceful assembly and to freedom of association with others…', followed by a specific reference to trades unions and the listing of many exceptions based on law, public safety, national security, and so on – to the point of making the right seem not very contentful.[17] That aside for now, the wording of such statements seems narrow – confined explicitly or implicitly to trades unions, political organisations, and other semi-public bodies. But the right surely is not that narrow, whatever we think of the way it is worded in conventions and declarations.

The right to free association includes such things as (and some of these are also recognised in international documents): the right to found a family and choose your spouse; the right to choose your friends; the right to choose where you live, with whom you socialise, who you let onto your property, where you shop, where you enjoy leisure time, your business

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relationships, political associations – and more. Clearly freedom of association is a broad right whatever limitations it may be subject to. Note that freedom to choose where and with whom you do business is reflected in the legal right to freedom of contract, but this specific right is founded on the moral right to freedom of association. The same for the freedom to choose whom to let on your land, where the right to property presupposes freedom of association.[18] Without freedom of association, or – more realistically – with severe curtailment of the right, totalitarianism is a likely consequence. One of the hallmarks of a totalitarian regime is its coercion of membership in officially-approved organisations only and expulsion from the rest. Another is its virtually total surveillance, which severely constricts a person's choice of friends, associates, and even family. Totalitarianism contains the denial of freedom of association at its core.

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So I think we can all agree that freedom of association is a fundamental right, albeit not without limits. I am not free to associate with others for a criminal purpose: that's conspiracy. I am not free, as the law currently stands, to marry five women at the same time, even if they all freely consent. Associations that break the law are forbidden, and of course the devil is always in the detail: what should those limits be? I want to focus, however, on the converse of freedom of association – what I call freedom of *dissociation*. After all, if we are free to associate with whomever we choose, why are we not free to dissociate from whomever we choose? Just as I am free to choose my friends, so I am free to drop them; just as I am free to join a trade union, a political party, or a gym, so I am free to end my membership. Nor am I required to join in the first place. So by dissociation I mean both non-association and withdrawal from association. People are free to marry or remain single, and they are also free under law to separate or divorce. Some religions forbid divorce, and one may debate the ethics of divorce, but that's not the point; we have already noted that issues arise over where limitations are to be drawn, and I will come to that. For now, I am arguing that there is a moral right to freedom of dissociation, and noting that the law reflects this.

Now a brief aside of the kind typical among philosophers: one might question whether there is a general right to freedom of dissociation even though there is a general right to freedom of association. Perhaps there are specific rights to dissociate from certain kinds of relationship but no more. Why think that every right has, to use the technical parlance, a *contrary*? Does the right to educate one's children imply a contrary right not to educate them? The right to keep a promise hardly entails a right to break it. Obviously, where a right entails or is entailed by an *obligation* to act in some way, there will not be a contrary right. That notwithstanding, most if not all of the rights we find clustered together with freedom of

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association seem to have contraries. It is plausible to hold that every right that has the form of a *permission*, but without a corresponding obligation, has a contrary. Working out what the contrary of a right is can be tricky, but consider freedom of speech. I have the right to speak but also a contrary right. Which one? The contrary right is either ceasing to speak (obviously a right) or not speaking when one can, that is, deliberately remaining silent. Deliberate silence, again, has limitations (is there a right to be silent after witnessing some horrific crime?), but it looks pretty general. Isn't the famous right to silence – the common law part of that general right to be silent when one might speak? How about freedom of religion itself? I am free to belong to a religion but also free to end my membership, whatever the consequences may be for me personally. I am also free to be an atheist – deliberately to espouse no religion. Freedom of movement means I have the right to live wherever I want within my country, but I am also free not to move even if the opportunity arises to move; and I am free to settle once I have made my choice.

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It would be absurd to hold, though, that freedom of speech entails freedom to silence someone else, so that is obviously not a contrary right since the contrary of speaking is remaining silent, not silencing. The contrary of moving is staying still, not making someone else move. And so on. In other words, the contrary rights pertain to a person's not doing what they have a right to do in a way that does not violate the rights of others. This is rights theory 101, of course, but it is important for what I am going to argue. There may be rights with no contrary, only a contradictory. That is, although every (purely permissive) right to X entails a right not to X, it may be that not every right to X entails, to put it loosely, a right to un-X, or dis-X, or de-X, and so on for all the other verbal prefixes apart from 'non'. I am not sure what rights they may be, which is why I assume for now that there are no Hotel California rights, as we might call them – rights you can exercise but not *withdraw* from exercising. Even if my assumption were false, though, it seems clear that the rights clustering together with freedom of association all do have contraries, which means the onus should be on my opponent to show why freedom of association is an exception.

3. Freedom of dissociation as a solution to the conscience problem

So let us accept, then, that there is a right to freedom of dissociation. What consequences might this have? My central claim is that invoking freedom of dissociation and putting it into practice is probably the best way of handling the conscientious objection problem growing ever greater in liberal, pluralistic, multicultural, secular democratic societies. It might be a

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way of solving the problem rather than either managing it or overturning liberalism altogether and replacing it with a kind of secular authoritarianism. (This is a real possibility; religious authoritarianism is not, of course.) Before outlining what I think dissociationism means in principle and practice, I want to make clear what it is not. Dissociationism is not internal secession or balkanisation. That is, it does not mean the breaking up of liberal society into distinct, independently governed societies. Balkanisation can work (to the extent that any solution works for longer than decades): look at the Balkans after the fall of the Soviet Union. It usually is a recipe for instability, though, often leading to war or at least perpetual unrest. Dissociationism is not some sort of geopolitical strategy applied to the state, is not about who governs us, or about independence, ethnic preservation, and the like. Rather, it is about how people and groups interact with each other *within* a state.

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Note at once that freedom of dissociation can work at the group *or* individual level, unlike balkanisation. At the individual level, a person who has deeply-held religious or ethical convictions are violated by their having to do X in respect of some other person Y, should not be compelled to do X – not *merely* because of freedom of conscience, but because of freedom of dissociation. This is not playing with words, as though the two rights amounted to the same thing. Freedom of dissociation is clearly wider than freedom of conscience. If I choose not to be friends with you it is unlikely to be because it would violate my deeply-held religious or ethical beliefs. Our choices about who to do business with or who to choose as a spouse, or whether to get married or do any particular bit of business at all, are unlikely to be matters of conscience, nor is whether to join the local tennis club. Now, *within* the scope of freedom of association there will lie matters of conscience. Not all matters of conscience are matters of association, but many of them do fall within the broader ambit. So my question is: why shouldn't individuals or groups be allowed, as a matter of law and policy, to dissociate themselves from relations with others when such relations would violate their conscience? And the follow-up question is: if they should be allowed, then as long as the people or groups from whom the former dissociate are still able to obtain what they want, why should they object to such a freedom – one they too would possess?

Let's start with health care, where so much of the concern currently exists. In the UK, there is a virtual government monopoly on health care (something that seems odd on its face, for why isn't there a government monopoly on food provision, which is even more important than health?). In the UK, abortion has been legal since 1967. If you want to work in health care, at least in a clinical setting, and you are opposed to abortion, you are going to have a problem. There is a conscience clause in s.4 of the Abortion Act that will exempt you

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from 'participating in any treatment' authorised by the Act, but as the midwives Doogan and Wood found out when they lost their Supreme Court case in 2014,[19] the protection does *not* extend beyond the abortion procedure itself to related tasks such as supervising staff involved more directly in abortions and providing pre- and post-treatment care to patients seeking abortions. Given the wording of the Act, the Court reached a reasonable decision that what the plaintiffs objected to on conscience grounds was not covered by the exemption.

Suppose, however, there were a more expansive provision of private health care alongside government provision, sufficient to give conscientious objectors to abortion or some other procedure a realistic choice about whether to expose themselves to activities to which they object. At the same time those with no objection to the relevant activities would still have a practicable option to work within the government health care sector. Abortion, or whatever activity it may be, would remain legal and freely available, but objectors would be free and legally permitted to avoid it altogether. Why, at least in principle, should such an arrangement be objectionable? There would be no need for piecemeal conscience clauses or ad hoc legislation, though of course cases would still need adjudication and a body of common law precedent would need to develop. The situation would be in many respects similar to the USA, where the federal Church Amendments[20] give extensive conscience protection to workers in hospitals in receipt of federal funding. Because there is a far more expansive private health sector in the USA than in the UK, there is already far more employment choice and health care workers can generally avoid getting into difficult conscience situations.

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4. The problem of the Satanist nurse

As a solution to conscience problems in health care, more private sector choice would seem very promising. We should, though, look immediately at probably the hardest kind of case, one that is obviously bizarre although not beyond the realms of possibility. Take the case of the Satanist nurse who refuses to treat Christians because it goes against her Satanist code of conduct. Should her conscientious objection be respected in law and policy? There are three reasons why the nurse might find herself in that situation: it was deliberate; it was an accident; it was necessary. If deliberate, that is, the nurse wanted to be in a situation where she could refuse to administer live-saving treatment to a Christian, she would be no different to the diabolical serial killer nurses we occasionally hear about[21] – liable to prosecution for homicide. I do not suggest that current laws regarding crimes against the person should be changed to accommodate conscientious objection to not killing! On the other hand, if the

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Satanist nurse was there by accident, she obviously did not know what she might be exposed to, so she lacked information. The remedy would be for every hospital to make it abundantly clear what kinds of treatment they provided and whether their patient base was universal or restricted.

The third reason is that the nurse had nowhere else to work and, knowing the problem she might face of having a treat Christian, had her post and went to work there anyway. The solution is obvious: she shouldn't have to work there. On my proposal, she should not have to find another profession any more than Doogan and Wood. Rather, she would have the option of working in a private Satanist hospital where the Satanist code of conduct would be a precondition of employment and the hospital advertised quite clearly and unambiguously who they treated and what services they offered. Needless to say, the hospital should not expect a large clientele – many hard-headed Satanists would probably avoid it as well – but at least the nurse would have somewhere to ply her Satanic trade. But I said that dissociationism should apply to individuals as well as groups: what if the nurse was, as it were, 'the only Satanist in the village'? That freedom of dissociation applies to individuals as well as groups does not imply that an individual can manage without a group to back them up. Conscientious objectors in wartime generally benefit from well worked-out procedures enabling them to avoid violating their consciences, whether they be moved to medical work, administrative jobs, and so on. An individual pacifist may well feel himself alone but he knows that there will be others scattered about and many that have gone before him, and he can benefit from that shared history. By contrast, if there really were only one Satanist health care worker with no Satanist support to rely on it would, alas, be bad luck: if the person in that society is so idiosyncratic in their beliefs as to find themselves out on a limb, they might just have to make some sacrifices, so to speak. They might well have to retrain, or else leave the country. A small price to pay, I should think, for a blanket right to dissociation.

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5. The unjust discrimination worry: forced labour versus full and fair access

In discussing this sort of outlier case I am not trying to be facetious or dismissive. On the contrary, if such an outlier can be handled, more realistic and less bizarre cases probably can as well. In 2013, the UK Supreme Court dismissed a final appeal by Mr and Mrs Bull, owners, of a guest house in Cornwall, against Mr Preddy and Mr Hall, a gay couple who had sought to rent a double room from the owners.[22] They were refused since the owners, as Christians, disapproved of homosexuality – in fact of all extra-marital sexual relations.

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Preddy and Hall claimed discrimination under the Equality Act (Sexual Orientation) Regulations 2007, and were successful. Once again, given the law as it stands, it is hard to see how a different decision could have been reached. As Lady Hale, writing for the Court, put it: 'Now that, at long last, same sex couples can enter into a mutual commitment which is the equivalent of marriage, the suppliers of goods, facilities and services should treat them in the same way.'[23]

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It seems to me that this sort of case raises very serious, wide-ranging problems of what might called a structural nature, having nothing in particular to do with gay rights or Christians. The UK Supreme Court ruled that a Christian who objects to homosexuality must rent their guest house room to a gay couple. Renting means selling a time-limited portion of one's property. In the case of a guest house, it also means selling whatever services come with rental of a room, such as making meals, cleaning the room, providing various amenities, and so on. So if the law requires a person to sell their goods and services to another person, even though they object on conscientious grounds to doing so, why shouldn't the law also require a person to *work* for another person even though they object, on conscientious grounds, to working for that person? After all, working for someone is just another contract of sale – the sale of one's labour. Moreover, if the law, as it does, requires a person to *hire* another even though they object, on conscientious grounds, to doing so, why shouldn't it require someone to *work* for another despite conscientious objection? In other words, if you are compelled to sell your goods and services to someone despite conscientious objection, why not your labour? And if you are compelled to *buy* someone's labour despite such an objection, why shouldn't you be compelled to *sell* it? Yet being compelled by law to work for someone you don't want to work for is tantamount to a form of slavery, or at least forced labour.

For what it is worth, forced labour has long been condemned by the International Labour Organisation, in conventions dating back to 1930 and 1957.[24] The 1930 convention, ratified to date by 178 countries (i.e., virtually universally), condemns 'all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily.'[25] The only exceptions are military service, 'normal civic obligations' including 'minor communal services', punishment for conviction in a court, and emergency service. Under 'normal civic obligations' one might include such paid or unpaid labour as jury service and assisting law enforcement, among others.[26] There is no suggestion that it includes routine employment. Further, the 1957 convention, ratified by 175 countries, explicitly condemns 'forced or compulsory labour' as 'a means of political

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coercion or education or as a punishment for holding or expressing political views or views ideologically opposed to the established political, social or economic system', and as 'as a means of racial, social, national or religious discrimination.'[27] On the face of it, it seems that being compelled to sell one's labour to a specific person or group despite a conscientious objection to doing so is ruled out under these conventions. Yet if one must sell ones goods and services, what is the difference?

If freedom of dissociation were given the force that it deserves, many of these sorts of problem could be obviated. A Christian couple could refuse to rent their room to a gay couple as long as there were other providers willing to supply a room. Why should it matter that there are other providers? In other words, why should freedom of dissociation depend upon whether one of the parties can have their wants fulfilled by a third party? The answer is that I am trying to find a practicable solution to the problem that respects both sides. Suppose Bill and Bob are starving and they come across one life-saving piece of food that, if divided between them, would not be enough to save either of them. Who should get the food, assuming there are no other factors to differentiate them in terms of entitlement? It looks as though, in a case such as this, morality has no answer. But it does, and the answer is – toss a coin. After all, to say that neither Bill nor Bob should have the food, and so both should die, seems morally repugnant. To say that both should have the food is morally impossible since it is physically impossible. To say that one should be preferred over the other, given no differentiating factor, seems objectionably arbitrary because ungrounded in any good reason. A coin toss looks like the only decent alternative: if Bob wins the toss, then his getting the food is not objectionably arbitrary. This is because the coin toss is a way of *recognising* rather than denying the equal entitlement of both individuals. Random selection is precisely the reason for awarding the food to one rather than the other.

Return now to the case at hand. Suppose we were in the unlikely situation where the gay couple could not find another guest house that was sufficiently suitable to meet their needs, and there was no other compromise they could reasonably be asked to make (such as abiding by the rules of the Christian guest house or not taking a holiday in that area, or at that time, and so on). In that case, given the assumption that both sides had an equal entitlement to have their rights respected (an assumption I have been making all along), a coin toss looks like the only solution. If the Christian owners win, the gay couple doesn't get the room. If the gay couple wins, they do. We cannot say that freedom of dissociation should prevail because that would make one side a winner and the other a loser despite their equal entitlement. Hence the requirement that the gay couple should have a reasonable prospect of meeting their

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requirements in another way. Of course, what counts as a 'reasonable prospect' is going to be difficult to unpack. Minor inconvenience doesn't make a prospect unreasonable. Having to make a total change of plan does. Perhaps the devil is in the detail, but here I tend to think the details should not detain us at this stage. The main point is that if dissociationism is to be a viable policy, all parties have to have a reasonable prospect of respect for their rights. In a conscience case, the objector must have a reasonable prospect of their conscientious objection being respected, and the opposing party must have a similar prospect of their rights being respected.

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Now consider a particularly difficult case. Take the owner of a guest house who refuses to rent a room to someone because of their ethnicity, or their religion, or gender. Should freedom of dissociation have any sway here at all? Many of us would think not, just as many would object to dissociation in the Christian guest house/gay couple case. In the latter case, however, dissociation does not seem repugnant on its face. In contemporary liberal society, in fact, dissociation might lead to a thriving market in guest houses for gay couples only, gay and also mixed, and perhaps also in guest houses for Christians. There is no reason in advance for thinking that either group would not be catered for to a good standard. Yet when it comes to ethnicity, religion, or gender (and perhaps other groupings) we tend to think immediately that old prejudices will rear their head and one group or other will end up with the short end of the straw. We think of certain groups being treated as 'second-class citizens' with access only to second-tier facilities. This is not inevitable, mind you: male-only clubs are still legal in the UK but there has been a surge in female-only clubs in classy parts of London. It is still legal in the UK to refuse membership to a club or association on grounds of, among other characteristics, religion or ethnic origin, as long as the club is set up precisely for the purpose of restriction to the characteristic on the basis of which refusal of membership is made.[28] So it is not as though it is inexorable that lower-grade facilities would be all that became available to persons or groups refused admission to decent facilities. Even if this was the result, why couldn't the government step in and mandate certain standards for all associations? They already do it for food retail, doctors' surgeries, and so on.

6. What kind of society?

Such reassurances notwithstanding, perhaps the heart of the worry has not yet been addressed. Maybe it is not about second-class standards but about the kind of society we want

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to live in, about attitudes toward each other. If there were wholesale limitations on association available to any and every group and even every individual, what would this say about our common citizenry and about the 'inclusiveness' that is supposed to be the hallmark of a liberal, diverse, secular, tolerant, pluralistic society? I see the worry, but I also see how the issue of tolerance and respect cuts both ways. On one hand, we show tolerance and respect by encouraging association among fellow citizens rather than discouraging it. The governments of pluralistic societies, as well as many liberal-minded citizens, want people to be happy *together*, not apart. The desire is hardly unreasonable, and it would certainly be illiberal to *encourage* dissociation among people who do not want it. In other words, dissociationism should not *trump* free association; rather, it is merely the *converse* of an existing right, and if the former is downgraded the latter ceases to be a mere right (if, as I claim, it is) and becomes something akin to an obligation. This looks like a recipe for friction rather than a social lubricant.

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On the other hand, an essential element of tolerance and respect is the recognition that we all have certain freedoms in the way we organize our spaces of social interactions. A person or group might not wish to form a certain association because of a deep and sincerely held objection to involvement in an organization that requires performance of certain actions violating their religious or ethical beliefs. Or, at the other end of the spectrum, they might simply not want to form a certain association due to personal or group preference. People do this sort of thing all the time, for example in the choice of where they live, where they work, or where they send their children to school. Now a given preference may or may not mask an attitude worthy of deprecation. I might not want to be your friend or, less strongly, not seek your friendship because I haven't noticed you, or have enough friends already. Such situations hardly involve reprehensible attitudes. It might also be that I suspect you are not loyal, are untrustworthy, or just plain boring. Here, attitudes are in play but they may be perfectly reasonable, founded on good evidence. They may also involve honest beliefs founded on insufficient evidence yet without any cognitive irresponsibility on my part. Now suppose I don't like the colour of your hair, or don't want to be seen with you because I find you ugly, or I just don't like the colour of your skin. Probably all of us would see such attitudes as worthy of disapproval and yet no law forces us to make friends with anyone, however bad our reasons for not doing so. It is hard, more importantly undesirable, to legislate against bad attitudes per se, and downright totalitarian to compel particular friendships whatever the reasons people have for not forming them.

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It is not clear to me why *civic friendship*, if I can put it that way, is especially different in this regard. We all have civic duties, of course, both to the state and to each other, and these require a certain amount of association. I have to associate with Her Majesty's Revenue and Customs to the extent necessary for me to pay my taxes. Absolutist tax protesters aside, we rightly find this sort of compelled association desirable. Whenever someone takes on a certain social role or enters into certain commercial activities having understood and tacitly accepted the rules surrounding those activities, they are to a degree compelled to associate with particular persons and groups rather than others. If you choose to shop in Sainsbury's, you had better accept the need to associate minimally with the other shoppers. If you choose to send your child to school X rather than school Y, you had better be ready to associate, perhaps to a relatively high degree, with the other parents as well as the teachers. Now this idea of tacit acceptance is important, and it clearly undergirds many of our social interactions. The critic of dissociationism might object that civic friendship is disanalogous to personal friendship precisely due to this tacit acceptance. One does not have to be a deontologist about morality to recognize that there is a sense in which we have all 'signed up' to certain kinds of behaviour merely by dint of being a citizen of a certain state, whether or not we chose to be one.

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For the purposes of the present discussion, what have we signed up to in virtue merely of being citizens rather than citizens who have adopted certain roles or social environments? We have signed up to kinds of association necessary for the fulfilment of our civic duties, whether it be paying taxes, being good neighbours, obeying the law, keeping the peace, and so on. If we are capable of working and have no prior duty not to, we have signed up to being productive members of society. We have not, I contend, signed up to associating with any *particular* individual or group, though we have signed up to being, as it were, 'good associates' of both those with whom association is unavoidable in the circumstances and of whomever we have chosen to associate with in the first place. Other than that, I contend, we are – to put it in a slightly negative form – free to be *left alone*. I am not averse to calling the freedom of dissociation the 'right to be left alone' because this formulation wears on its face the notion of *personal space* – the freedom without which a person truly is a cog in a totalitarian regime. Personal space is not undermined by the simple fact that when you do associate with other citizens, whether through choice or necessity, you are obliged to be civil to them – in the literal, etymological sense of the term. Only anarchists or sociopaths think that one's very *presence* in a state, living with its citizenry, is an affront to one's personal space. That space is undermined, in my view, by state-sanctioned requirements of *particular*

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association. Such requirements shrink one's personal space almost to vanishing point if applied across the board. If not applied across the board yet still applied broadly in a way that rubs increasingly against one's deeply-held beliefs or even against one's simple personal and day-to-day choices – as is the case now – one's personal space is severely constrained and diminished.

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7. Does liberal society have a higher good?

Yet isn't the dissociationist still missing the point? Isn't it just 'for the good of society' that the state can compel certain kinds of association from which people might otherwise desist? But exactly what does the good of society consist in? Isn't that part of what the disagreement is all about, in particular whether it is for the good of society that there be a legally-recognized right to dissociation, one that has both passive and active components? The passive component is the right to be left alone ab initio. The active component is the right to *withdraw* from associations imposed upon a person or group that do not come under the umbrella of the general civic duties, and similar ones, mentioned earlier. Now if the 'good of society' is just what is being contested, then appeal to it by *either* side has no weight. To make the point more clearly, consider an illustration. Take, for example, sixteenth-century Florence or seventeenth-century England. Consider the state-imposed compulsory contribution for maintenance of the church – the Catholic Church in Florence, or the Church of England. More specifically, consider the obligation of a person residing within a certain parish to contribute to the building of a new parish church. There are four relevant situations to consider. (1) The citizen accepts that there is a higher obligation, overriding their personal choice about whether to contribute – namely, the transcendent good of the Church. And there does exist such a good, as an objective fact. (2) The citizen does not accept that there is a higher obligation, but in fact there is a transcendent good grounding such an obligation. (3) The citizen accepts a higher obligation, but no such transcendent good exists. (4) The citizen does not accept a higher obligation, and no such transcendent good exists.

Now, in case (1) the citizen has no right to decline to pay, nor would they even consider not paying. In case (2), they have no right to decline to pay, so if they did decline due to non-recognition of a higher good, the most they could be afforded by the state is a degree of *tolerance* in the strict sense. That is, for the greater peace and stability of society, the state might tolerate their non-payment, or a derisory payment. In case (3), we are assuming that there is no higher good: the society, be it Florence or England, is founded on a

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big mistake. Yet the citizen frankly *accepts* a higher obligation, however ill founded. In other words, they have signed up to certain civic duties recognised in that society. Objectively, they may be under no unqualified obligation to help pay for a new church; nor may any other citizen. However, to put it glibly, they have to play by the rules. Less glibly, the citizen is under an objective but *qualified* obligation to abide by the conventions of that society if for no other reason than the sake of peace and stability. What of case (3), where the citizen does not accept the requirement to pay and there is no higher good justifying the supposed obligation? Here it is hard to see how anything could override a right by the citizen to dissociate from the relationship requiring payment. There *might* be grounds involving peace and stability, but only if the objecting citizen is were to suffer some sort of marginalization or 'ghettoisation' that denied them fair and equal access to the civic amenities they wished to enjoy. That is precisely why fair and equal access, practically speaking, is so important. What about, from the other side, the difficulty the church might find itself in of not benefitting from contributions that are being withheld? That too might cause instability among the citizens who fully accept an obligation to pay. Yet I do not see how *that* sort of risk in any way morally obliges the objectors. If you give me some spurious reason why you need my property, and I know the reason is baseless, the friction caused by *your* not getting your way hardly obliges *me* to cough up, as it were.

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In cases (1) to (3), there is no clear right to dissociation, at least – in case (3) – not one any citizen would seek to exercise. I submit that our current predicament is akin to case (4). Objectors to certain forms of association – in particular, conscientious objectors – do not recognise an obligation to associate in those ways. The slight but interesting difference from (4) is that with respect to (4) I suggested the state might be labouring under an illusion about whether a transcendent good underwrites the obligations they seek to impose on recalcitrant citizens. Perhaps the religion to which the rulers appeal is a mistake. In our case, however – the case of liberal society – it's not that liberalism might be wrong (a whole other discussion) but that liberalism *itself* offers no higher good to underwrite the obligations of association it seeks to impose. In other words, what exactly *is* it that liberalism can appeal to that, if it existed, would underwrite a *wholly general* obligation to associate in ways the state deemed desirable? Is it 'progress'? But appeal to progress is either vacuous or question begging in this context. What progress could it be other than the progress that involves citizens associating in the way the state wants? The same applies to a term such as 'harmony'. What about 'getting along'? Again, the risk of begging the question is front and centre. There are various ways of getting along, and one of them might be by *not* getting along – going one's

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separate way to a large extent. The same goes for 'peace' – the peace of separation can be as effective as the peace of togetherness, and sometimes the peace of the latter is as illusory as the peace of the former is enticing. By 'peace' one might mean 'peace and stability', the absence of conflict. In that sense, there might of course be an overriding reason to prevent dissociation, but that, to repeat, is precisely why fair and equal access is essential to preventing the sort of conflict that an appeal to peace and stability is designed to avert.

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8. Conclusion: the look of a dissociationist society

What does all of this fairly abstract theorizing have to do with practical politics? How would a society *look* if freedom of dissociation were given the respect it deserved? What would a dissociationist society look like in practice? The practical aspect of dissociationism, apart from my rather abstract recommendations concerning fair and equal access, and the like, are not my concern here. Indeed, as a philosopher I doubt I am equipped to say anything of great substance. That is why we have politicians. What I would insist is that a dissociationist society that was recognizably liberal can exist. By definition it would be smaller and pluralistic, with a government and state apparatus that had to be professedly neutral in its dealings with different individuals and groups. There would, of course, be fierce competition for resources, but then that exists already with the various groups and organizations that constantly lobby, and even hijack, government in order to benefit from taxpayer funds. There seems to me no reason in principle why a system of revenue sharing and equitable distribution could not be implemented. A dissociationist state would, I presume, be highly federalised.

Recall, I am not talking about balkanization or anything close. The issue is not one of borders and sovereignty, but of internal freedoms for individuals and groups. The degree of federalisation would depend on the extent of dissociation – not something anyone can predict. But there would have to be mechanisms for recognizing dissociation in various walks of life. Take the sort of example with which I started, namely health care. A single, monolithic, state-run service might not be inherently inconsistent with dissociationism, but the complexity of implementing it might mean that a fully or partly privatised service was the only practical solution. One could not rule out a fully state-run service broken into multiple subsidiaries that serviced different groups, with equitable sharing of resources, but again the cost and complexity might be prohibitive compared to the efficiencies of a private system of health care. Again, it would depend in large degree on the extent of dissociation: what do

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people want? What would best service the requirements of the different individuals and groups in a given society?

I leave it to experts to think about the ways in which freedom of dissociation could be implemented. I want to emphasize that, for all the distaste or aversion many might feel toward the dissociationist proposal, the key idea remains: either there is freedom of association or there is not. If there is, then there thus must be freedom of dissociation. Either freedom of conscience and freedom of religion are taken seriously or they are not. If there is no freedom of religion, or no freedom of conscience, or no freedom of dissociation as a broad, general right, then liberalism as it is – a myth. To call oneself liberal while resisting from the rights and freedoms liberals should take seriously is to be liberal in name only. Rather than focusing on our worst instincts and the many ways in which dissociationism can go wrong, perhaps liberals should do what they have always professed to do, which is show some faith in human nature and in the possibility for people to get along despite their differences if the social arrangements are right. If they are not right – if diversity combined with proximity lead to conflict – then maybe the best way out is to dissociate.

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Notes

[1] http://www.catholicherald.co.uk/news/2016/06/23/california-churches-forced-to-cover-abortion-in-healthcare-plans/. (This and all web pages last accessed 14.4.17.)
[2] http://www.nationalreview.com/corner/437649/ontario-md-assoc-requires-all-docs-complicity-euthananasia.
[3] http://www.catholicherald.co.uk/news/2016/07/04/catholic-care-home-in-belgium-fined-for-refusing-euthanasia/?utm_content=buffer[illegible]&utm_medium=social&utm_source=twitter.com&utm_campaign=buffer.
[4] Strickland (2012).
[5] https://www.bma.org.uk/advice/employment/ethics/expressions-of-doctors-beliefs
[6] https://www.thefire.org/cases/university-of-delaware-students-required-to-undergo-ideological-reeducation/.
[7] http://blog.practicalethics.ox.ac.uk/2016/08/consensus-statement-on-conscientious-objection-in-healthcare/.
[8] http://www.telegraph.co.uk/news/religion/9802067/Christian-wins-right-to-wear-cross-at-work.html.
[9] https://www.theguardian.com/world/2016/aug/19/nice-becomes-latest-french-city-to-impose-burkini-ban
[10] http://www.dailymail.co.uk/news/article-3464222/Gay-couple-feel-dehumanized-Christian-baker-refuses-make-wedding-cake.html.
[11] Burwell (2013).
[12] RFRA (1993).
[13] See, for example, Indiana: https://en.wikipedia.org/wiki/Religious_Freedom_Restoration_Act_(Indiana).
[14] This is a simplification, of course. Very similar conflicts occur *within* religions, for example liberals against conservatives on women ministers in some Christian churches. But it would also be misleading to paint the battle lines as between liberals and conservatives, since one might be a relatively liberal religious believer and still object to some state impositions, such as compulsory sex education or the prohibition of certain religious displays. The best way of characterising the conflict is as one between religious freedom and freedom of conscience on one side and secular or at least secularising forces on the other.
[15] UDHR (1948): Article 20.
[16] ECHR (1950): Article 11, sec. 1.
[17] Article 20 of the UN Declaration is similar, albeit a bit less expansive with its exceptions.
[18] Isn't it the other way around – that freedom of association presupposes, at least in part, the right to property? After all, right to choose whom to let onto my land or use my goods, and so on, depends upon my prior ownership. True, but this is not enough to show that property rights are prior to association rights. It is my right to associate with whom I choose, including with whom I choose to enter an exchange, that makes it possible for me to have property rights at all, since the latter entail freely chosen exchanges of ownership, use, and the like.
[19] Doogan (2014).
[20] http://www.usccb.org/issues-and-action/religious-liberty/conscience-protection/upload/Federal-Conscience-Laws.pdf.
[21] Such as a recent, gruesome case from Brazil: http://www.torontosun.com/2013/03/28/brazilian-doctor-charged-with-7-murders-linked-to-300-deaths.
[22] Bull (2013).

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[23] Ibid: para. 36. At the time, the state did not recognise 'gay marriage', so Preddy and Hall were in a 'civil partnership' with many of the benefits of marriage.
[24] See http://www.ilo.org/global/about-the-ilo/newsroom/news/WCMS_181922/lang--en/index.htm and the links therein to the two conventions.
[25] Forced Labour (1930): Article 2, sec. 1.
[26] National Academies (2004): 141.
[27] Abolition (1957): Article 1, sections (a) and (e).
[28] Equality Act (2010); see, for explanation, EHRC (2014): 10.

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